

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

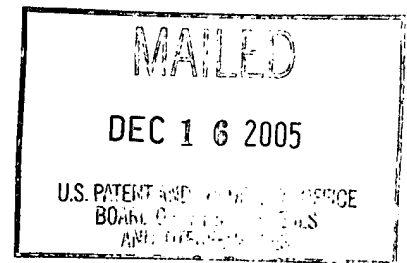
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIDEKIYO TAKAOKA
And KIYOTAKA MAEGAWA

Appeal No. 2006-0215
Application 10/087,742

ON BRIEF



Before PAK, WARREN and KRATZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 CFR § 41.50(a)(1) (2005); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 3, August 2005).

The record shows that the examiner entered and considered the reply brief filed August 2, 2005, and responded to issues raised therein in the communication mailed October 17, 2005.

37 CFR § 41.43(a)(1) (September 2004) provides in pertinent part that “the primary examiner . . . may furnish a supplemental examiner’s answer responding to any new issue raised in the reply brief.” *See also* MPEP § 1207.05 (8th ed., Rev. 3, August 2005). This MPEP section provides as a matter of practice that “[e]very supplemental examiner’s answer must be approved by a Technology Center (TC) Director or designee.” *See also* MPEP § 1208 (8th ed.,

Rev. 3, August 2005; 1200-46); 1286 Off. Gaz. Pat. & Trademark Office 37-38 (September 7, 2004).

The examiner's communication mailed October 17, 2005, is in fact a supplemental examiner's answer and there is no indication in the communication that the supplemental examiner's answer was approved by a Technical Center Director or his/her designee.

Thus, the issue is raised as to whether the communication mailed October 17, 2005, is properly part of the record on appeal.


Accordingly, the examiner is required to take appropriate action consistent with current examining practice and procedure to either have the supplemental answer mailed October 17, 2005, approved by a Technical Center Director or his/her designee, or to vacate the communication mailed October 17, 2005, and mail a new communication that only acknowledges receipt and entry of the reply brief, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.


This remand is *not* made for the purpose of directing the examiner to further consider the grounds of rejection.

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

This application, by virtue of its “special” status, requires immediate action. It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal in this case. *See* MPEP § 708.01(D) (8th ed., Rev. 3, August 2005).

Remanded


CHUNG K. PAK
Administrative Patent Judge


CHARLES F. WARREN
Administrative Patent Judge


PETER F. KRATZ
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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